

FRAMEWORK AGREEMENT

concerning the distribution of network related services

between

VUMATEL PROPRIETARY LIMITED

And

[ISP]

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1. PARTIES

This Agreement has been entered into between the following parties:

- 1.1 VUMATEL Proprietary Limited, 2014/138808/07, 31 Georgian Crescent, Bryanston, 2191 ("**VUMATEL**").
- 1.2 Service Provide namely [**INSERT NAME OF ISP**] [**INSERT REGISTRATION NUMBER**], [**INSERT ADDRESS**] ("**Service Provider**").

2. INTERPRETATION

In this Agreement -

- 2.1 clause headings are for convenience purposes only and shall not be used in its interpretation;
- 2.2 unless the context clearly indicates a contrary intention –
 - 2.2.1 an expression which denotes any gender includes the other genders, a natural person includes an artificial person (whether incorporated or unincorporated and including the State) and *vice versa* and the singular includes the plural and *vice versa*;
 - 2.2.2 where any term is defined within a particular clause, other than this interpretation clause, that term shall bear the meaning assigned to it in that clause wherever it is used in this Agreement;
 - 2.2.3 the following expressions shall bear the following meanings and related expressions shall bear corresponding meanings in all attachments hereto which do not themselves contain their own conflicting definitions –
 - 2.2.3.1 "**Act**" means the Electronic Communications Act 36 of 2005, as amended or replaced from time to time;
 - 2.2.3.2 "**Agreement**" means this Framework Agreement and any Area Specific Agreement concluded between the Parties;
 - 2.2.3.3 "**Applicable Laws**" means all national, provincial, local and/or municipal legislation, regulations, statutes, by-laws, ordinances, consents and/or other laws of any relevant Governmental Authority and/or any other instrument having the force of law as may be issued and in force from time to time relating to or connected with the activities or the Subscriber Services contemplated under this Agreement;

- 2.2.3.4 **"Area Specific Agreement"** means a network specific service delivery agreement that the Parties will execute in relation to the roll out of the Network and the Subscriber Services to additional geographic areas, to be incorporated by reference into this Agreement and forming an annexure to this Framework Agreement after execution thereof;
- 2.2.3.5 **"Authority"** means the Independent Communications Authority of South Africa, established in terms of section 3 of the Independent Communications Authority of South Africa Act 13 of 2000, or its successor in title and includes any other body which assumes its functions;
- 2.2.3.6 **"Business Day"** means any day other than a Saturday, Sunday or official public holiday in Territory;
- 2.2.3.7 **"Commencement Date"** means the date of signature of this Agreement by the Party signing last in time;
- 2.2.3.8 **"Content"** means any content, code, information, game, media, message or similar service that is supplied to any person by means of the Network or by means of a third party's network in the format of text, data, graphics, pictures, video or any other relevant format (other than voice);
- 2.2.3.9 **"Cooling Off Period"** means -
- 2.2.3.9.1 five Business Days of the conclusion of a transaction (as defined under the CPA) if a transaction is governed by the CPA;
- 2.2.3.9.2 seven days of the conclusion of a transaction (as defined under the ECTA) if the transaction is governed by the ECTA;
- 2.2.3.10 **"CPA"** means the Consumer Protection Act 68 of 2008, as amended or replaced from time to time;
- 2.2.3.11 **"Delivery Point"** means a specific geographical location, agreed between the Parties, at which Service Provider connects its Equipment to VUMATEL's Equipment, and to which Service Provider delivers Internet capacity or its services. A Delivery Point shall be specified in each Area Specific Agreement;
- 2.2.3.12 **"Direct Marketing"** has the same meaning given in the CPA and, accordingly, means marketing through an approach, either in person or by mail or Electronic Communication, for the direct or indirect purpose of promoting or offering to supply any goods or services to a Subscriber;

- 2.2.3.13 “**ECTA**” means the Electronic Communications and Transactions Act 25 of 2002, as amended or replaced from time to time;
- 2.2.3.14 “**Electronic Communication**” means electronic communication as defined in the ECTA;
- 2.2.3.15 “**Equipment**” means a device used by the Subscriber to access the Subscriber Services;
- 2.2.3.16 “**Fault**” means a fault which occurs when a Subscriber is affected by service outage or when the functionality, features, interfaces, availability and / or quality differ significantly from this Agreement;
- 2.2.3.17 “**Fault Report**” means the notification of a Fault provided by Service Provider to VUMATEL;
- 2.2.3.18 “**Fees**” means all amounts charged by VUMATEL to the Service Provider in relation to the Network Services, which specifically includes, but is not limited to, the Minimum Commitment Fee, as more fully described in clause 10 below;
- 2.2.3.19 “**Framework Agreement**” means this Agreement including (**Annexure 1** – Contacts; **Annexure 2** – Service Levels; **Annexure 3** – Handling of Subscriber Orders and **Annexure 4** – Troubleshooting; but excluding any Area Specific Agreements);
- 2.2.3.20 “**Framework Terms**” means the terms and conditions contained in the Framework Agreement, comprising clauses 1 to 29 thereof, including any amendments thereto;
- 2.2.3.21 “**Handover Point**” means a Network connection or port, with a specific capability, at the Subscriber premises to which the Service is delivered;
- 2.2.3.22 “**Information Regulator**” means the Information Regulator established in terms of section 39 of the POPI Act;
- 2.2.3.23 “**Licence**” means the Electronic Communications service licence issued to VUMATEL by the Authority in terms of the Act, as amended, renewed or replaced from time to time;
- 2.2.3.24 “**Minimum Commitment Fee**” means the minimum monthly fee payable by the Service Provider
- 2.2.3.25 “**Network**” means the communications network used for the distribution of Subscriber Services that VUMATEL owns and/or operates from time to time, and the Parties have agreed shall be included in this Framework Agreement or in

any Area Specific Agreement. The Network can comprise several different geographical locations.

- 2.2.3.26 **"Network Services"** means the services to be supplied by VUMATEL to the Service Provider and/or directly to the Subscribers in terms of this Agreement;
- 2.2.3.27 **"Network Facility"** means a physical component of the Network and includes, but is not limited to, a circuit, cable, and wireless antenna;
- 2.2.3.28 **"Parties"** means collectively VUMATEL and the Service Provider and **"Party"** refers to either one of them, as the context may require;
- 2.2.3.29 **"Personal Information"** has the same meaning given in the POPI Act;
- 2.2.3.30 **"POPI Act"** means the Protection of Personal Information Act, No. 4 of 2013;
- 2.2.3.31 **"RSA"** means the Republic of South Africa;
- 2.2.3.32 **"Service Provider's Terms and Conditions"** means the terms and conditions that the Service Provider is required to have the Subscriber sign up to in order to access the Subscriber Services;
- 2.2.3.33 **"Signature Date"** means the date of signature of this Agreement by the last signing Party;
- 2.2.3.34 **"Subscriber"** means a company or individual who signs the Service Provider's Terms and Conditions for the delivery of Subscriber Services which are or are intended to be distributed over the Network;
- 2.2.3.35 **"Subscriber Services"** means the service or services that the Service Provider agrees with VUMATEL to offer to prospective Subscribers on the Network, and where the Network is a prerequisite for, or significantly enables, delivery to the Subscriber. For clarification, services are those that the Subscribers can access through their internet access service, and where a server function is not accessible through the Network, it is not considered to be a service;
- 2.2.3.36 **"Termination Date"** means the date of termination of this Agreement for any reason whatever;
- 2.2.3.37 **"Territory"** means the RSA;
- 2.2.3.38 **"Third Party"** means any person which is not a Party to this Agreement; and
- 2.2.3.39 **"VAT"** means Value-Added Tax as defined and determined by the Value Added Tax Act, No. 89 of 1991.

- 2.3 should any provision in a definition be a substantive provision conferring rights or imposing obligations on a Party, effect shall be given to that provision as if it were a substantive provision in the body of this Agreement;
- 2.4 any reference to an enactment, regulation, rule or by-law is to that enactment, regulation, rule or by-law as at the Signature Date, and as amended or replaced from time to time;
- 2.5 when any number of days is prescribed, such number shall exclude the first and include the last day, unless the last day falls on a day other than a Business Day in which case the last day shall be the next succeeding Business Day;
- 2.6 any schedule or annexure to this Agreement shall form part of, and be deemed to be incorporated in, this Agreement;
- 2.7 the use of the word "including" or "includes" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it;
- 2.8 the expiration or termination of this Agreement shall not affect those provisions of this Agreement which expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination notwithstanding the fact that the clauses themselves do not expressly provide for this;
- 2.9 in its interpretation (this Agreement being the product of negotiations between the Parties), this Agreement shall not be construed in favour of any Party by reason of the extent to which that Party or its professional advisors participated in the preparation of this Agreement;
- 2.10 Any reference in this Agreement to a Party shall include a reference to that Party's assigns expressly permitted under this Agreement and, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be;
- 2.11 "in writing" or "written" mean legible writing in the English language and shall include any form of electronic communications contemplated in the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);
- 2.12 All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement, which is or becomes unenforceable whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, to the extent that it is so unenforceable, be treated

as *pro non scripto* and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would have been executed without such unenforceable provision had they been aware of such unenforceability at the time of execution hereof;

- 2.13 Where in this Agreement the consent of a Party is required for any purpose, same shall, unless the context indicates otherwise, refer to the prior written consent of such Party, which consent shall not be unreasonably delayed or withheld. In the event of delay, refusal or withholding of such consent, the onus shall be on the Party seeking same, to prove that the delay, refusal or withholding of the consent was unreasonable in all circumstances. The foregoing reference to "consent" shall be deemed to include a reference to any consent, approval or permission which may be required of a Party in terms hereof;
- 2.14 Unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning;
- 2.15 No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a party hereto;
- 2.16 All appendices and other attachments to this Agreement shall be considered integral parts hereof; and
- 2.17 recordals shall be binding on the Parties and are not merely for information purposes.

3. **AGREEMENT STRUCTURE**

- 3.1 The Parties acknowledge that the Framework Agreement is intended to cover all general rights and obligations between the Parties. It is the Parties' intention to continuously expand the scope of the Framework Agreement by concluding and adding Area Specific Agreements. It should be noted that the Area Specific Agreement forms an integral part of this Agreement and in the event of any conflict arising between the terms of the Framework Agreement and any Area Specific Agreement, the order of precedence for interpretation shall be dealt with as set out in clause 3.3. A signed copy of the Area Specific Agreement shall be attached to this Framework Agreement as an annexure, if it is effective as at the Commencement Date, alternatively by means of an addendum to this Framework Agreement if effective thereafter.
- 3.2 This Agreement does not constitute any commitment by any Party to enter into any Area Specific Agreement. Any Area Specific Agreement, when executed by the

respective duly authorised representatives of the Parties, will constitute an annexure to this Framework Agreement. Each Area Specific Agreement shall be dated and numbered sequentially and will thereafter be adduced to this Agreement as outlined in clause 3.1 above.

- 3.3 The annexures to this Framework Agreement (**Annexure 1** - Contacts; **Annexure 2** - Service Levels; **Annexure 3** - Handling of Subscriber Orders; **Annexure 4** – Troubleshooting; are an integral part of this Agreement. The documents listed hereunder constitute this Agreement. In the event of a conflict between one or more of these documents, the order of precedence for the interpretation thereof shall be -
- 3.3.1 the Area Specific Agreement(s);
 - 3.3.2 annexures to the Area Specific Agreement(s);
 - 3.3.3 the Framework Terms;
 - 3.3.4 **Annexures 1, 2, 3, and 4** to the Framework Agreement.

4. **INTRODUCTION**

- 4.1 VUMATEL is a network and communications operator that owns, installs and maintains Electronic Communication networks and infrastructure, including but not limited to the Network.
- 4.2 The Service Provider offers network related services to customers and wishes to offer Subscriber Services to potential Subscribers and ultimately the Subscribers.
- 4.3 The Parties have today agreed to cooperate in the distribution of network related services in the areas set out in the Area Specific Agreement(s) concluded by the Parties from time to time. To the extent that the Parties agree that any Area Specific Agreement constitutes a pilot agreement between the Parties, the Parties shall regularly, and at the Termination Date, evaluate this Agreement and the cooperation established under this Agreement. If the Parties agree it is necessary to amend this Agreement, or to agree new Area Specific Agreement(s) in respect of Networks other than the present, the Parties may then agree to add new area specific networks or geographical areas to this Agreement by signing either a new Area Specific Agreement or an entirely new framework agreement.

5. **STATUS OF RELATIONSHIP**

- 5.1 The Service Provider is an independent party and its employees, shall not be employees of VUMATEL.

- 5.2 The Service Provider agrees that for the purpose of this Agreement, it is an employer in its own right with duties as prescribed in the Occupational Health and Safety Act 85 of 1993 as amended from time to time.
- 5.3 The Service Provider shall not have authority to bind VUMATEL to any contracts unless previously authorised in writing by VUMATEL nor shall the Service Provider hold himself out to be an employee, agent or partner of VUMATEL and VUMATEL shall not be obliged to enter into any legal relationship or conduct any business with any potential partners and/or customers identified or engaged by the Service Provider.
- 5.4 This Agreement is not exclusive. Notwithstanding the signing of this Agreement, VUMATEL reserves the right to procure, sell and provide access to its Network to any other service provider.

6. **VUMATEL'S OBLIGATIONS**

- 6.1 VUMATEL grants a non-exclusive and non-transferrable right to the Service Provider during the term of this Agreement to use the Network for the distribution of Subscriber Services to Subscribers.
- 6.2 VUMATEL undertakes to connect Subscribers and the Service Provider to the Network and to distribute Subscriber Services to connected Subscriber addresses on the Network.
- 6.3 VUMATEL's undertaking extends from, and includes, the Delivery Point to a defined Handover Point for each Subscriber as set out in the respective Area-Specific Agreement.
- 6.4 VUMATEL undertakes to maintain the service levels set out in Annexure 2, to the extent that such performance is within its control.
- 6.5 VUMATEL is responsible for service, maintenance, support, monitoring (Second Line Support) and administration of the Network from and including the Delivery Point to respective Handover Point, either by itself or through a subcontractor. The Delivery Point and Handover Point are defined in the applicable Area Specific Agreement.
- 6.6 Subject to 7.4 below, VUMATEL has the right but not the obligation to display the Subscriber Services on its network portal as well as in material sent out to prospective Subscribers.
- 6.7 VUMATEL is responsible for the fulfilment of the obligations detailed in **Annexures 2, 3 and 4.**

- 6.8 Except where the law provides otherwise, VUMATEL may refuse to supply any services or products specified in any order form without giving any reasons for the refusal. Without limiting the generality of this, VUMATEL may refuse to provide a service or product if a Service Provider does not meet the conditions of VUMATEL's credit referencing procedure and/or fails to meet VUMATEL's minimum credit standards and/or fails to provide proof that the Service Provider complies with all Applicable Laws, amongst other things.
- 6.9 VUMATEL may carry out a general credit check on a Service Provider at any time before accepting the Service Provider's order and/or at any time during the Service Provider's use of the Network Services. The purpose of the credit check is to determine whether or not the Service Provider meets VUMATEL's credit criteria.
- 6.10 VUMATEL reserves the right, at its election, to suspend all Network Services to the Service Provider if it fails to timeously pay its fees, provided that VUMATEL has first given the Service Provider written notice of at least seven Business Days to remedy the non-payment, alternatively VUMATEL may rely on the rights afforded it in clause 23.5.1.
- 6.11 VUMATEL reserves the right to refuse access to its Network to the Service Provider should the Service Provider not pass VUMATEL's Service Provider qualification process in which VUMATEL determines *inter alia* if:
- 6.11.1 sufficient value will be added to the Subscribers via the Service Provider's offering;
 - 6.11.2 the Service Provider's support functions are sufficient to adhere to the service levels required;
 - 6.11.3 the Service Provider's own network quality is up to the standards required or any other standards that Vumatel may apply over time.
- 6.12 VUMATEL may in its sole discretion review a Service Provider against its qualification criteria and reserves the right to suspend all Network Services to the Service Provider if it fails to adhere to these standards. VUMATEL's qualification criteria may change from time to time and such changes will be communicated to the Service Provider in writing. Any such changes shall apply uniformly to all service providers, be generally applicable, and non-discriminatory.
- 6.13 The Service Provider may not withhold the payment of any fees by reason of any of its Subscribers not having paid the Service Provider.
- 6.14 If VUMATEL determines that a Fault has been caused by any equipment belonging to the Subscriber or installed at the Subscriber's home, VUMATEL may charge the

Subscriber to repair the Fault and is entitled to charge the Subscriber directly and collect a call-out fee based on the Subscriber's location and the nature and extent of the Fault, which call-out fee will be determined by Vumatel from time to time in its reasonable discretion.

- 6.15 VUMATEL will be responsible for the maintenance and repair of Equipment which is purchased from VUMATEL only if the Equipment has been supplied with the Network Services contracted for.
- 6.16 If the Equipment provided by VUMATEL fails, or becomes faulty or defective within 3 (three) months of the Subscriber receiving the Equipment, the Subscriber must notify the Service Provider who in turn shall notify VUMATEL. VUMATEL will carry out the required action following receipt of the notification from the Service Provider and, where the Equipment provided by VUMATEL is defective, VUMATEL shall repair or replace such Equipment at its own cost and expense. Where such Equipment is defective or non-functional as a result of any conduct on the part of the Service Provider or any related or unrelated Third Party, the Subscriber shall be charged in accordance with clause 6.14 above.

7. SERVICE PROVIDER'S OBLIGATIONS

- 7.1 The Service Provider warrants that it has the necessary rights, licences and authorities to enter into and perform its obligations in terms of this Agreement. and any Area Specific Agreement.
- 7.2 It is recorded and agreed that VUMATEL's compensation under this Agreement is primarily based on the actual number of active Subscribers on the Network and the Network speeds or services provided to active Subscribers. During the term of this Agreement it is therefore the responsibility of the Service Provider to actively, and in an appropriate manner, market and sell its Subscriber Services in order to add new Subscribers.
- 7.3 The Subscriber Services shall be offered to Subscribers in accordance with the Service Provider's prevailing rates and terms for such Subscriber Services, as published by VUMATEL from time to time. The Service Provider is responsible for the contractual relationship with its Subscribers and a separate service agreement shall be entered into between the respective Subscriber and Service Provider for access to the Subscriber Services, being the Service Provider's Terms and Conditions.
- 7.4 The Service Provider is responsible for sales and marketing of the Subscriber Services. In selling and marketing the Subscriber Services, the Service Provider shall not make any representations in regard to the Network to its Subscribers beyond that which

VUMATEL makes to the Service Provider in this Agreement or any Area Specific Agreement.

- 7.5 VUMATEL has the right but not an obligation to market any services to Subscribers via its websites and portals and to use the Service Provider's name and trademark in connection therewith in the aforementioned websites and portals, provided that the above promotion is limited to the market covered by an Area Specific Agreement.
- 7.6 After the sale of a Subscriber Service to a Subscriber, the Service Provider is responsible for maintaining the relationship with such Subscriber. The Service Provider undertakes to handle billing, monitoring and customer support (First Line Support) for the delivered Subscriber Services to the Subscribers.
- 7.7 The Service Provider is responsible for the performance of its duties under **Annexure 4**.
- 7.8 The Service Provider will provide VUMATEL relevant information concerning the use of the Network Services, Equipment, Network Facilities or matters related thereto, in a format to be agreed. The Service Provider must also continuously provide information about new or planned services to VUMATEL, where such services might reasonably be expected to impact of the ability of VUMATEL to provide services over the Network to other service providers and Subscribers.
- 7.9 The Service Provider will not, without the prior written consent of VUMATEL, add any equipment or device to the Network infrastructure which may either result in any impairment of any services offered over the Network, alternatively for the purposes of circumventing any limitations or restrictions imposed on the Service Provider or any Subscriber, which may include but will not be limited to equipment used for the purposes of creating large public wireless networks or similar hubs.
- 7.10 The Service Provider must comply with any instructions issued by VUMATEL which concern the Service Provider and Subscriber's use of the Network Services, Equipment, Network Facilities or matters related thereto, and which may be required to ensure the satisfactory provision of the Network Services, to protect the integrity of the Network, or to deal with emergencies.
- 7.11 VUMATEL may, at its discretion, and to the extent that it is a requirement for the type of Network Services contracted for, supply and/or install Equipment which is purchased by the Subscriber from VUMATEL.

- 7.12 Where any item of Equipment is not provided by VUMATEL and/or delivery of the Subscriber Services requires additional equipment, the Service Provider must supply this at its own cost.
- 7.13 The Service Provider must ensure that all Equipment that is not provided by VUMATEL and that is installed at the Subscriber premises by the Service Provider or Subscriber has been approved by the Authority in terms of the Act. VUMATEL may suspend the provision of any Network Service to the Subscriber where Equipment is being used that has not been approved by the Authority, until such time as the Equipment has been properly approved or is removed or replaced.
- 7.14 The Service Provider must ensure that any Equipment it installs at the Subscriber premises, which has not been purchased from and/or installed by VUMATEL, does not interfere with or degrade the operation of the Network Facilities and/or the Network.
- 7.15 The Service Provider may not resell capacity on any Network Facilities obtained from VUMATEL or cede or assign its rights to use a Network facility, or sublet or otherwise part with control of it, without VUMATEL's prior written consent.
- 7.16 The Service Provider shall be responsible for –
 - 7.16.1 the installation, maintenance and repair of its own equipment and facilities (rented or owned) at the Delivery Point;
 - 7.16.2 the installation, maintenance and repair of its own equipment and facilities at the Handover Point, if necessary or applicable; and
 - 7.16.3 all costs associated with clause 7.16.1, including costs of connecting its equipment to the Delivery Point.

8. SUBSCRIBER TERMS AND CONDITIONS

- 8.1 The Service Provider shall ensure that every agreement entered into with a Subscriber for the Network Services shall –
 - 8.1.1 reflect the nature and import of this Agreement without disclosing its contents;
 - 8.1.2 conform to the indemnities and disclaimers in this Agreement and shall not result in any liability to the Subscriber being imposed on VUMATEL beyond that expressly provided for in this Agreement.

9. GENERAL OBLIGATIONS

- 9.1 The Parties shall perform all obligations of this Agreement in accordance with all Applicable Laws.

- 9.2 Each Party shall operate, maintain, repair, and inspect, and shall be fully responsible for the facilities that it now or subsequently may own unless otherwise specified in this Agreement. Each Party shall be responsible for the safe installation, maintenance, repair and condition of their respective infrastructure and equipment on their respective sides of the Delivery Point.

10. PRICES AND PAYMENT TERMS

- 10.1 The Parties agree on the Fees and payment terms relating to the supply and provisioning as set forth in each Area Specific Agreement(s).
- 10.2 Changes to Fees and payment terms become effective between the Parties two calendar months after VUMATEL has informed the Service Provider in writing about a revised price list or revised payment terms, provided such changes are commercially reasonable and apply equally to all similarly situated service providers. The Service Provider has the right to terminate this Agreement, giving one calendar month's written notice before such changes to Fees and payment terms would have taken effect between the Parties. During the notice period the original Fees and payment terms shall apply.
- 10.3 VUMATEL has the right to invoice the Service Provider for Fees monthly in arrears based on Subscriber Services, Subscriber volumes and Network Services provided to the Service Provider as specified in the Area Specific Agreement(s).
- 10.4 Payment shall be made by the Service Provider within 30 calendar days of invoice date. In case of a delay in payment, default interest, calculated on the amount due and collection costs, shall be applied at the published prime overdraft rate of VUMATEL's bankers, plus two percent.
- 10.5 VUMATEL is entitled to charge a Minimum Commitment Fee to the Service Provider. The Minimum Commitment Fee is set out in the relevant Area Specific Agreement and is payable by the Service Provider in every month during which the relevant Area Specific Agreement is in effect, unless otherwise agreed by VUMATEL in writing.
- 10.6 All quoted prices for Fees and any other amounts are exclusive of VAT and other taxes and are quoted in South African rands, unless otherwise specified.
- 10.7 If at any time the Service Provider, acting in good faith, disputes all or any portion of the Fees charged on any invoice before payment of that invoice. –
- 10.7.1 the Service Provider shall notify VUMATEL within thirty calendar days after the date of receipt of a invoice for the fees, specifying in reasonable detail the Service Provider reasons for disputing the invoice;

- 10.7.2 notwithstanding any dispute raised by the Service Provider, the Service Provider shall pay to VUMATEL all Fees set out in the invoices and not disputed by the Service Provider; and
- 10.7.3 if the Parties are unable to resolve the dispute within fourteen calendar days of notice given in accordance with clause 10.7.1, either Party may escalate the matter for resolution in accordance with clause 25.
- 10.8 Upon resolution of a dispute and subject to clause 10.10, (i) any sum which the Service Provider agrees to pay (whether such agreed sum is in the amount originally invoiced, or a reduced amount) shall be payable within seven calendar days of the resolution of the dispute in respect of the particular invoice and (ii) any sum which VUMATEL agrees to pay or refund to the Service Provider shall be set off against any amounts owing by the Service Provider to VUMATEL and, if no amounts are owing by the Service Provider to VUMATEL or such owing amount is less than the amount VUMATEL is required to refund, shall be payable into an account specified by the Service Provider, within seven calendar days of the resolution of the.
- 10.9 Should the Service Provider fail to dispute any Fees within the 30 calendar day period contemplated in clause 10.8 above, the Service Provider shall thereafter no longer be permitted to withhold payment of any amounts owing to VUMATEL by reason of such dispute, pending the finalisation of the dispute.
- 10.10 Subject to what is contained in this clause 10 and any Applicable Laws, payment of an invoice shall not prevent the Service Provider from subsequently disputing all or any of the Fees in good faith whether during or within 30 days after the term of this Agreement.
- 10.11 VUMATEL shall not be obliged to pass on to the Service Provider any discounts and any commissions which VUMATEL receives from Third Party providers in relation to the Network.
- 10.12 Apart from the fees, all other expenses or costs incurred by either Party in the execution and implementation of this Agreement, shall be borne by the Party incurring such expenses or costs, unless the additional expenses or costs were agreed to in writing by the other Party.

11. AGREEMENT TERM

- 11.1 This Agreement shall commence upon the Commencement Date and endure indefinitely, unless terminated by either of the Parties hereto on one calendar month's notice. The notice of termination shall be in writing and delivered to the other Party.

- 11.2 Where an Area Specific Agreement remains in force at the time of termination of this Agreement in terms of clause 11.1 this Agreement shall, despite such termination, remain in effect until the relevant Area Specific Agreement is also terminated. If that Area Specific Agreement is terminated within the notice period set out in clause 11.1, then this Agreement shall terminate concurrently at the end of that notice period.

12. **OPERATIONAL LIAISON**

- 12.1 The Parties shall consult together regarding the operation and implementation of this Agreement and any Area Specific Agreement and shall use their respective reasonable commercial endeavours to resolve any problems arising from such consultation or otherwise encountered in their relationship.
- 12.2 Each party shall, within fourteen (14) days of the Signature Date, appoint a representative to oversee the day-to-day practical implementation of this Agreement.

13. **AMENDMENT TO THE AGREEMENT FOR OPERATIONAL REQUIREMENTS**

- 13.1 Notwithstanding anything contained in this Framework Agreement or in any Area Specific Agreement, should VUMATEL be required to adjust or amend any term or condition of this Agreement, VUMATEL shall be entitled to do so by giving the Service Provider two calendar months' written notice, after which such adjustment or amendment shall automatically apply.
- 13.2 VUMATEL shall only be entitled to exercise its rights under clause 13.1 above where such amendments:
- 13.2.1 relate to any legitimate operational, commercial, technical or regulatory considerations or obligations of VUMATEL;
 - 13.2.2 apply uniformly and consistently to all of VUMATEL's similarly situated service providers;
 - 13.2.3 do not materially disadvantage any particular individual or group of VUMATEL's service providers, nor materially benefit any particular individual or group of VUMATEL's service providers; and
 - 13.2.4 do not amend, vary or introduce any conditions or requirements for access to its Network Services in a manner that is unjustifiable or discriminatory given the conditions or requirements imposed on service providers generally.
- 13.3 Any changes to any term contemplated in clause 13.1 become effective between the Parties two calendar months after VUMATEL has informed the Service Provider in writing about changes to relevant terms and/or conditions. The Service Provider has

the right to terminate this Agreement, giving one calendar month's written notice before such changes to such terms and conditions would have taken effect between the Parties. During the notice period the existing terms and conditions shall apply.

14. **INDEMNIFICATION**

14.1 The Service Provider agrees to indemnify, hold harmless and defend VUMATEL and its officers, employees, agents and representatives from and against the following damages, loss and liabilities (hereinafter collectively referred to as "liability") arising as a result of:

- 14.1.1 any liability with regard to claims by governmental authorities or others for non-compliance by the Service Provider with any Applicable Laws provided that such compliance therewith was required for the execution of this Agreement;
- 14.1.2 any liability arising out of intentional or negligent acts, or omissions to act, of the Service Provider;
- 14.1.3 any liability arising out of the rendering of the Subscriber Services;
- 14.1.4 any claims by the Service Provider and/or its Subscribers if the Network Services becomes unavailable as a result of –
 - 14.1.4.1 any person making unauthorised and/or improper use of the Network Services and/or Subscriber Services with or without the Service Providers or Subscriber's knowledge and/or consent;
 - 14.1.4.2 any person causing damage to or stealing any element of the Network;
 - 14.1.4.3 any Fault caused as a result of Equipment that was not supplied by VUMATEL;
 - 14.1.4.4 as a result of any negligence on the part of VUMATEL or any of its staff, agents, representatives, contractors or appointees;
- 14.1.5 any liability arising from claims with regard to the death of, or injury to, the Service Provider or the death of, or injury to, Third Parties due to the Service Provider's negligence; and
- 14.1.6 any liability arising from any loss of, or damage to, property (including VUMATEL property and/or Equipment of the Service Provider);
- 14.1.7 any liability for Content conveyed via the Network.
- 14.2 The Service Provider shall, at the Service Provider's own cost and expense, defend any action instituted by such Third Party against VUMATEL. VUMATEL shall assist the Service Provider by providing to the Service Provider such information as the Service

Provider may require in order to defend any of the aforesaid proceedings instituted against VUMATEL.

- 14.3 The Service Provider's obligation to indemnify VUMATEL will survive the termination of this Agreement by either Party for any reason.

15. **INSURANCE**

- 15.1 The Service Provider warrants that it has appropriate insurance in effect for the duration of this Agreement to cover any reasonable and foreseeable claims that may arise in the course of rendering the Services.
- 15.2 The Service Provider will, on request by VUMATEL, produce a copy of the insurance policy, proof of payment of premiums and renewals.
- 15.3 The Service Provider's indemnity obligations herein shall not be limited in any way by the face value or other applicable limits of any insurance cover obtained by the Service Provider.

16. **DISCLAIMER**

- 16.1 Notwithstanding any other provisions of this Agreement, VUMATEL's total liability under this Agreement is in any event limited to an amount not exceeding R2,000,000.00, or the total amount paid to VUMATEL under this Agreement, whichever is the lesser.
- 16.2 Notwithstanding anything to the contrary contained in this Agreement, neither Party shall be liable to the other Party for (i) any indirect, special, incidental, punitive or consequential loss; or, (ii) indirect or direct loss of profits, production, revenue, anticipated savings, goodwill or business opportunities or business interruption, arising from its performance or non-performance under this Agreement; provided that this clause 16.2 shall not apply to any losses that may by law not be excluded.
- 16.3 VUMATEL assumes no responsibility for the integrity, correctness, retention or content of the information transported via the Network and will not be liable in relation to such Content.
- 16.4 VUMATEL only provides access to the Network. VUMATEL does not operate or control Content. The Subscriber or the Service Provider will have no claim against VUMATEL relating to any Content or relating to any information, product, services or software ordered through or provided over the Network or as part of the Network Services. However, VUMATEL may take measures to ensure security and continuity of the services on the Network within VUMATEL's discretion, including the identification and blocking or filtering of internet traffic.

- 16.5 The Subscriber and the Service Provider are responsible for maintaining the security of their internal network from unauthorised access through or over the internet. VUMATEL will not be liable for unauthorised access to the Subscribers', Service Provider's or any customer's, subscriber's or any service provider's network or other breaches of network security.
- 16.6 VUMATEL does not own or control other Third-Party networks outside of the Network. VUMATEL is not responsible for any filtering or access restrictions imposed by such networks or for the performance (or non-performance) within such networks or within interconnection points between the Network and other Third-Party networks.

17. **DAMAGE OR DESTRUCTION TO THE INFRASTRUCTURE**

- 17.1 Should the infrastructure or any part thereof be damaged or destroyed to the extent that the Service Provider is prevented from having the beneficial use thereof, the Service Provider will have no claim of whatsoever nature against VUMATEL and VUMATEL's sole obligation to the Service Provider will be to repair the damaged or destroyed section of the infrastructure in accordance with the service level procedures set out in **Annexure 2**.
- 17.2 In such circumstances, VUMATEL will repair the damaged or destroyed section of the infrastructure and will use reasonable endeavours to repair same in accordance with the service level procedures set out in **Annexure 2**.
- 17.3 Should the infrastructure or any part thereof be damaged or destroyed by a Third Party to the extent that the Service Provider is prevented from having the beneficial use thereof, the Service Provider cedes its right, title, and interest to VUMATEL to claim and recover such losses and / or damages caused by such Third Party, where the Service Provider will be indemnified against any counterclaim raised by such Third Party.
- 17.4 To the extent that any damage to the infrastructure is so severe that such damages are not capable of being repaired under the service levels set out in **Annexure 2**, same shall constitute a Force Majeure Event (as defined in clause 18) and be dealt with in terms of clause 18 and the Service Provider will not be liable for payment of the *pro rata* portion of the Fees for so long as it is deprived of the beneficial use of the infrastructure or any particular optical fibre strands.

18. **FORCE MAJEURE**

- 18.1 Force Majeure in respect of any Party means an event beyond the reasonable control of that Party, its contractors or sub-contractors without the fault or negligence of that

Party and was not reasonably foreseeable and providing that such event materially and adversely affects the ability of such Party to perform its obligations under this Agreement, including, but not limited to, damage, theft and/or destruction of infrastructure, war or civil war (whether declared or undeclared and including the serious threat of same) or armed conflict, invasion and acts of foreign enemies, riots, sabotage, blockades and embargoes, civil unrest, commotion or rebellion, any act or credible threat of terrorism, any act of God, earthquake, flood, extraordinary storm, nuclear, chemical or biological contamination or explosion, plaque, epidemic; pandemic, any act of any authority (including delaying or refusing of licences, wayleaves and/or restrictions on construction work), explosion, fire, industrial unrest, strikes and/or lockouts ("**Force Majeure Event**").

- 18.2 If a Force Majeure Event prevents a Party ("**Affected Party**") from performing any of its obligations under the Agreement, the Affected Party will be granted an extension to perform the relevant obligation.
- 18.3 The Affected Party is obliged to notify the other Party, as soon as reasonably possible, about the material adverse effect of a Force Majeure Event on the performance of its obligations under this Agreement to the reasonable satisfaction of the other Party, and furthermore advise what steps the Affected Party will take in order to resume performance of such obligations.
- 18.4 Upon the cessation of the event of the Force Majeure Event, the Affected Party shall immediately notify the other Party of such cessation and resume performance of the affected obligations.
- 18.5 If, as a result of a Force Majeure Event, the performance by the Affected Party of some but not all of its obligations under this Agreement are affected, the Affected Party shall nevertheless remain liable for the performance of those obligations not materially affected by such Force Majeure Event.
- 18.6 If the Service Provider is the Affected Party and a Force Majeure Event continues for a period of four months or longer, then the Service Provider may at the expiry of such period, provided the Force Majeure Event is still subsisting, give notice in writing to VUMATEL terminating the applicable Area Specific Agreement associated with the ongoing Force Majeure Event.
- 18.7 Where VUMATEL is the Affected Party and —
 - 18.7.1 a Force Majeure Event continues for a period of six months;
 - 18.7.2 the Service Provider has not exercised its rights under clause 18.6; and

18.7.3 the Force Majeure Event is subsisting,

VUMATEL may give a written notice to the Service Provider terminating the Agreement and/or the applicable Area Specific Agreement.

19. INTELLECTUAL PROPERTY

19.1 VUMATEL shall be considered to have a non-exclusive, non-transferable, royalty-free license to use and copy the intellectual property and know-how and any upgrades, additions, and new versions thereof (including, without limitation, patent, copyright, design, software, including its source code, names and trademarks) provided to VUMATEL in accordance with this Agreement to the extent necessary to carry out the delivery of the Network Services. In addition to this license, no other license will be granted or deemed to be transferred to a Party by one Party providing information to the other.

19.2 A Party is only entitled to use the other Party's name, logo, brand, product names, registered designs, patents or other similar registered or unregistered rights, having obtained written permission by the counterparty.

19.3 Each Party shall promptly inform the other Party of actual or suspected infringement of its right to a name, logo, trademark or other right as mentioned in clause 19.2 above. In cases where the counterpart wants to defend such rights, the defending Party shall bear any cost for such defence.

19.4 Each Party is responsible to ensure that meeting its obligations under this Agreement does not infringe on the intellectual property rights of any Third Party and shall hold the other Party harmless for any damages that may arise from infringement for which Party is responsible.

19.5 After termination of this Agreement, neither Party may use the rights, as detailed in clause 19.2 above, of the other Party.

20. HANDLING OF PERSONAL DATA

20.1 The Service Provider is responsible for the handling of the Personal Information of its Subscribers that it may provide to VUMATEL. VUMATEL and the person or persons operating under VUMATEL's supervision may only handle such Personal Information in accordance with the provisions set out in this Agreement or as from time to time directed by the Service Provider and in accordance with requirements of the POPI Act or any directions from the Information Regulator from time to time.

20.2 In the event that the data subject, to whom the Personal Information relates or other authorized Third Party requests information from VUMATEL concerning the processing

of Personal Information, VUMATEL will refer this request to the Service Provider. This means that VUMATEL will not give out Personal Information or other information about the processing of Personal Information without explicit instructions from the Service Provider where the Service Provider was directly responsible for providing such Personal Information to VUMATEL.

- 20.3 The Parties shall take the measures stipulated in the POPI Act, which means that -
- 20.3.1 the Parties hereby undertake that to the extent that either of the Parties shall be processing Personal Information of the other or any Personal Information of Third Parties retained by a Party, it shall comply with the principles set out in the POPI Act and all measures that give effect to those principles as contemplated in the POPI Act;
- 20.3.2 where any Personal Information is supplied by the Service Provider to VUMATEL for the purposes of processing by VUMATEL, the Service Provider shall be considered to be the Responsible Party, as defined in the POPI Act, and VUMATEL shall be considered to be the Operator, as defined in the POPI Act. However, where VUMATEL was entirely or partly responsible for securing any Personal Information in relation to a Subscriber or another Third Party, VUMATEL shall be considered to be a Responsible Party (whether alone or jointly with the Service Provider), and shall conduct itself in accordance with the requirements of the POPI Act, including in relation to the processing, storage and/or destruction of any such Personal Information;
- 20.3.3 the Parties agree that the Responsible Party (as defined in the POPI Act) shall determine and be liable for, the purposes for which and the manner in which Personal information is, or is to be, processed in the performance of this Agreement; and
- 20.3.4 where VUMATEL is acting as Operator, it confirms that it is technically capable and any additional costs incurred will be for the Responsible Party's account, the Operator agrees to deal promptly and properly with all reasonable inquiries from the Responsible Party relating to its processing of the Personal Information and to co-operate with the Information Regulator in the course of all its enquiries.

21. **CONFIDENTIALITY**

- 21.1 All technical and commercial information (including prices) provided under this Agreement and disclosed to or received from the other Party shall be deemed to be confidential information. Confidential information shall only be used to meet the

obligations of this Agreement and shall not under any circumstances be disclosed to Third Parties without the disclosing Party's prior written consent.

- 21.2 Nothing in this clause 21 shall prevent a Party from disclosing information –
 - 21.2.1 that was in its possession before the Party received from the other Party;
 - 21.2.2 that is or subsequently enters the public domain without breach of this clause 21;
 - 21.2.3 that Party independently receives from a Third Party without restriction as to its disclosure;
 - 21.2.4 independently developed by an employee who has not received the above information; or
 - 21.2.5 as a Party is required to disclose by law, stock exchange regulation or court order, provided that the Party who thus obliged promptly shall notify the other Party thereof, and do their best to limit the scope of the disclosure.
- 21.3 A Party is entitled to disclose confidential information to its subsidiaries, as defined in the Companies Act 71 of 2008, but only to the extent necessary to fulfil its obligations under this Agreement. Each Party is responsible for ensuring that its subsidiaries comply with and rightfully fulfil the provisions of this clause 21.
- 21.4 The obligations specified in this clause 21 shall be valid throughout the term of this Agreement, and three years after termination of this Agreement. Upon such termination, the Party shall return to the other Party any confidential information received from the other Party, if requested in writing.

22. **SUBCONTRACTORS**

The Parties have the right to use subcontractors to meet their obligations under this Agreement. If the Parties utilize subcontractors for the implementation of its obligations or some portion thereof, such Party shall be responsible for their subcontractor's work as if it was their own. The Parties shall ensure that subcontractors are subject to the same confidentiality undertakings to which the Parties are themselves subjected.

23. **CANCELLATION**

- 23.1 A Party to this Agreement ("**Defaulting Party**") shall be in default if it:
 - 23.1.1 commits a breach of any provision of this Agreement and fails to remedy such breach within five Business Days (or such period as may be reasonable in the circumstances) written notice to do so; or

- 23.1.2 the Defaulting Party commits an act of insolvency in terms of section 8 of the Insolvency Act 24 of 1936, as amended or replaced from time to time, which would have constituted such an act of insolvency if it had been a natural person; or
- 23.1.3 an order is made placing the Defaulting Party under supervision and/or commencing business rescue proceedings in respect of such Defaulting Party; or
- 23.1.4 the Defaulting Party is removed from the register of companies or is placed under provisional or final liquidation or sequestration;
- 23.1.5 notice is given of a meeting of the shareholders or directors of the Defaulting Party, at which meeting the voluntary liquidation of or the commencement of business rescue proceedings in respect of the Defaulting Party will be tabled; or
- 23.1.6 the Defaulting Party's board of directors resolves that the Defaulting Party voluntarily begin business rescue proceedings and be placed under supervision;
- 23.1.7 the Defaulting Party is (or is deemed by any authority or legislation to be) financially distressed, as contemplated in section 128 of the Companies Act 71 of 2008, as amended or replaced from time to time; or
- 23.1.8 the Defaulting Party (i) is unable to pay its debts as and when they become payable in the ordinary course of business, (ii) suspends or threatens to suspend payment of all or a material part of its indebtedness to the other Party or any other creditors, (iii) commences negotiations and/or takes any other step with a view to the deferral, rescheduling or other readjustment of all (or all of a particular type of) its indebtedness to its other creditors, or (iv) proposes or makes a general assignment or an arrangement or composition with or for the benefit of its creditors or a moratorium is agreed or declared in respect of or affecting all or a part of its indebtedness to the other Party or its other creditors; or
- 23.1.9 the Defaulting Party fails to satisfy any final judgment taken against it or fails to apply to have such judgment set aside within seven Business Days of becoming aware of it; or
- 23.1.10 the Defaulting Party commits repeated breaches of its obligations under this Agreement and the cumulative effect of those repeated breaches is regarded by the other Party as a material breach of this Agreement, or
- 23.1.11 the Defaulting Party infringes any intellectual property rights of the other Party and, if capable of remedying, fails to remedy the breach within five Business Days after the date on which the other Party delivered a written notice on the Defaulting Party calling upon it to remedy the breach; or

- 23.1.12 the Defaulting Party breaches clause 21 and, if capable of remedying, fails to remedy the breach within five Business Days after the date on which the other Party delivered a written notice on the Defaulting Party calling upon it to remedy the breach.
- 23.2 If a Party is in default, the aggrieved Party shall be entitled, in addition to all other remedies to which it may be entitled in law or in terms of this Agreement, to terminate this Agreement.
- 23.3 It is recorded and agreed that the Service Provider's obligations under this Agreement and in particular the Service Providers obligations to make payments to VUMATEL as specified in this Agreement is a key condition for the Service Provider's right to use the Network and VUMATEL's obligations in relation to the Service Provider.
- 23.4 Where the Service Provider has failed to make the relevant payment by the due date therefore, despite demand, then VUMATEL may, in its sole and absolute discretion, suspend the Service Provider's Network Services as an interim step prior to terminating the Service Provider's services entirely.
- 23.5 Notwithstanding 23.1, VUMATEL may terminate this Agreement in respect of a particular Area Specific Agreement if –
- 23.5.1 the Service Provider fails to make any payment to VUMATEL by the due date, and fails to remedy such non-payment despite VUMATEL having provided the Service Provider with seven Business Days written notice to remedy the non-payment, and VUMATEL's rights in this regard are in addition to its rights in clause 6.10 above;
- 23.5.2 VUMATEL ceases to have rights in and to the Network due to any termination of such rights for whatever reason;
- 23.5.3 the Service Provider has contravened –
- 23.5.3.1 any notices or rules communicated by VUMATEL to the Service Provider from time to time relating to the use of, access to or security measures relating to the Subscriber Services; or
- 23.5.3.2 any Applicable Laws relating to the Subscriber Services or a Subscriber's use of the Subscriber Services;
- 23.5.4 VUMATEL determines that the Service Provider has engaged in conduct that has caused or may cause damage to VUMATEL's facilities, the Network Facilities or any Third Parties; or

- 23.5.5 VUMATEL receives any direction, notification or instruction from any governmental or regulatory authority to suspend or terminate the provision of the Network Services to the Service Provider and/or Subscribers or generally (where the reason for this is not due to any fault or negligence of VUMATEL).
- 23.6 For the avoidance of doubt, and where the Service Provider has contravened any of the provisions set out in clause 23.5 above, in relation to any Area Specific Agreement, and has failed to remedy the breach despite notice, VUMATEL shall have the election to terminate the particular Area Specific Agreement alternatively the entire Agreement, in its sole and absolute discretion.
- 23.7 Upon suspension or termination of this Agreement, as the case may be, by VUMATEL and regardless of the reason for the termination, the Service Provider hereby provides its irrevocable permission for VUMATEL to contact the Subscribers in order to ensure a continuation of the Subscribers' Network Services, whether through a Third Party service provider or otherwise, and the Service Provider shall have no claim against VUMATEL, of whatsoever nature, as a result of VUMATEL's direct engagement with such Subscribers. The Service Provider hereby further confirms that, in such circumstances, the use of such Personal Information of the Subscribers is permitted for the purposes of ensuring the continuation of the Network Services, to the fullest extent permitted under the relevant Applicable Laws.
- 23.8 In the circumstances contemplated in clause 23.6 above, the Service Provider shall be liable to refund any amounts paid by any Subscriber for services which the Service Provider is unable to provide to such Subscriber as a result of the termination of the relevant Network Services by VUMATEL in accordance with this Agreement, and the Service Provider shall have no claim against VUMATEL in such circumstances.
- 23.9 A Party shall, in connection with the termination of this Agreement, return to the other Party all Equipment, software, documentation, marketing materials, and other materials, and any other information in whatever medium it is stored together with any copies thereof belonging to the other Party.
- 23.10 The termination of any Area Specific Agreement, for whatever reason, shall not affect the validity of any other current Area Specific Agreement, unless VUMATEL has elected to terminate same in terms of clause 23.5.1.

24. **NOTICES**

- 24.1 All notices shall be served by courier or electronic mail to the Parties in this Agreement or given later changed addresses and, for each sector, in accordance with the contact list provided in **Annexure 1**.

- 24.2 The notice shall be deemed to have been received, unless the contrary can be proven:
- 24.2.1 if delivered by courier to the relevant physical address, on the date of delivery as confirmed by the courier company;
 - 24.2.2 if sent via email to the email address provided for the Commercial and Legal contact person; on the first Business Day after transmission.
- 24.3 Any Party wishing to change any of their addresses must notify the other Party in writing as provided in this clause 24. Each Party shall provide a physical address, not being a post office box, at all times during the term of this Agreement.
- 24.4 Any notice given and any payment made by a Party to another Party ("**Addressee**") which is delivered by hand during the normal business hours of the Addressee at the Addressee's domicilium shall be rebuttably presumed to have been received by the addressee at the time of delivery.
- 24.5 Notwithstanding anything to the contrary in this clause 24, a written notice or other communication actually received by a Party shall be adequate notice to it notwithstanding that the notice was not delivered to its given domicilium.

25. **DISPUTE RESOLUTION**

- 25.1 Any dispute arising from or in connection with this Agreement and/or any Schedule or its termination shall, at VUMATEL's election, be resolved through arbitration in accordance with the rules of (but not necessarily under the auspices of) the Arbitration Foundation of Southern Africa ("**AFSA**") (or such other rules as may be agreed in writing by the Parties). The Parties shall agree the identity of the arbitrator or, in the absence of agreement within three days of a request therefor by any Party, the arbitrator shall be appointed by AFSA (or such other body as may be agreed to by the Parties). The arbitration shall be held in Johannesburg and either Party may appeal against the decision of the arbitrator to a panel of three arbitrators, one appointed by each Party and a third by agreement between arbitrators appointed by the Parties (or failing such agreement between arbitrators, by AFSA).
- 25.2 The Parties agree that the written request or demand by a Party in terms of this clause 25 that the dispute be submitted to mediation or arbitration is to be deemed to be a legal process for the purpose of interrupting extinctive prescription.
- 25.3 Notwithstanding anything to the contrary contained in this clause 25, neither Party shall be precluded from instituting any interdictory or similar proceedings in any appropriate court of competent jurisdiction and, if successful, being granted appropriate injunctive relief.

- 25.4 For the purposes of clause 25.2 and for the purposes of having any award made by the arbitrator being made an order of court, each of the Parties hereby submits itself to the non-exclusive jurisdiction of the Gauteng Local Division, Johannesburg, or its applicable successor in title.
- 25.5 This clause 25 –
- 25.5.1 is severable from the rest of this Agreement and shall, notwithstanding the termination, cancellation, invalidity or alleged invalidity of this Agreement or any part of it for any reason, remain in full force and effect; and
- 25.5.2 constitutes an irrevocable consent by the Parties to any proceedings in terms hereof and neither Party shall be entitled to withdraw therefrom. For the purposes of this clause 25 “proceedings” shall include proceedings referred to in clause 25.2.

26. **APPLICABLE LAW**

All matters arising from or in connection with this Agreement, its validity, existence or termination shall be determined in accordance with the laws for the time being of South Africa, (to the exclusion of its conflict of laws rules) and, subject to clause 25, the Parties hereby submit to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg, or its successor in title and all appeal courts therefrom.

27. **GENERAL**

- 27.1 This Agreement constitutes the sole record of this Agreement between the Parties in relation to its subject matter.
- 27.2 No Party shall be bound by any representation, warranty, promise or the like not recorded in this document.
- 27.3 No addition to, variation, novation or agreed cancellation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties.
- 27.4 No suspension of a right to enforce any term of this Agreement and no agreement not to enforce any rights under this Agreement and/or to accept delayed performance, shall be of any force or effect unless in writing and duly signed by or on behalf of the Parties.
- 27.5 No provision of this Agreement (unless expressly stated to be for the benefit of a Third Party), shall be construed as a contract in favour of such Third Party.
- 27.6 No indulgence which a Party may grant to the other Party shall constitute a waiver of any of the rights of the grantor unless in writing signed by the Parties.

- 27.7 All costs, charges and expenses of any nature whatsoever which may be incurred by a Party in enforcing its rights in terms of this Agreement, including legal costs on the scale of attorney and own client and collection commission, irrespective of whether any action has been instituted, shall be recoverable on demand from the Party against which such rights are successfully enforced and shall be payable on demand.
- 27.8 The provisions of this Agreement shall be binding upon the successors-in-title and the permitted assigns of the Parties. Accordingly, the rights and obligations of each Party pursuant to this Agreement shall devolve upon and bind its successors-in-title and permitted assigns.
- 27.9 All provisions in this Agreement are, notwithstanding the manner in which they have been put together or linked grammatically, severable from each other. Any provision of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as though it had never been written and the remaining provisions of this Agreement shall be of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provisions if they were aware of such unenforceability at the time of its execution.
- 27.10 No remedy conferred by this Agreement is intended, unless specifically stated, to be exclusive of any other remedy which is otherwise available at law, by statute or otherwise. Each remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law, by statute or otherwise. The election of any one or more remedy by a Party shall not constitute a waiver by such Party of the right to pursue any other remedy available at law.
- 27.11 This Agreement shall supersede and replace any previous framework or area specific agreement entered into between the Parties with effect from the Signature Date.

28. **COSTS**

- 28.1 Each Party shall bear their own costs relating and incidental to the drafting, preparation and execution of this Agreement.
- 28.2 Save as otherwise in this Agreement, if either Party obtains its own independent advice in relation to any tax or regulatory issues pertaining to the transactions contemplated in this Agreement and/or the negotiation, drafting, preparation and execution of this Agreement, such Party shall bear its own fees and costs in relation to such advice.

29. COUNTERPARTS

This Agreement may be executed in any number of counterparts and by the different Parties on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts together shall constitute one and the same instrument. A counterpart of this Agreement in scanned and emailed form or which is faxed shall be conclusive evidence of the original signature and shall be as effective in law as the counterparts in original form showing the original signatures.

[Signature Page Follows]

DATED AT JOHANNESBURG on this ____ day of _____ 20__.

As Witnesses:

1. _____
For and on behalf of VUMATEL (Pty) Ltd

2. _____

DATED AT _____ on this ____ day of _____ 20__.

As Witnesses:

1. _____
For and on behalf of **[INSERT NAME OF ISP]**

2. _____

ANNEXURE 1**CONTACTS**

Vumatel (Pty) Ltd 31 Georgian Crescent, Bryanston, 2191 2014/138808/07			
Area of Responsibility	Name	Phone	E-mail
Commercial and Legal			
Technical			
Finance			

[INSERT ISP DETAILS]		[INSERT NAME OF ISP]	
Area of Responsibility	Name	Phone	E-mail
Commercial and Legal			
Technical			
Finance			

CUSTOMER SUPPORT

During the onboarding process, Vumatel will provide the Service Provider with the relevant support escalation contact details.

ANNEXURE 2**NOC AVAILABILITY**

The Vumatel Network Operations Centre (NOC) is available 24 hours a day, 7 days a week. During their operating hours the Vumatel NOC is reachable via email at noc@vumatel.co.za for outage related queries only. The Vumatel NOC is a centralized team that monitors the performance and health of the Vumatel network and critical system performance and availability.

In the event of an unplanned outage (incident), the Vumatel NOC is responsible for logging, troubleshooting, reporting and coordinating the resources needed to resolve the incident within the target recovery times defined further below.

Logged incidents will be visible to Service Providers via the Service Provider portal and will include the following details:

- Nature and description of the incident
- Grade of the incident
- Network components and area/s affected
- Regular updates on the progress of the incident until resolution

In the event of the Service Provider being unavailable, email communication will be sent to Service Providers for Critical and Major graded unplanned outages only.

OUTAGE GRADING

Network related unplanned outages (incidents) and planned maintenance events are graded based on the number of active subscribers affected by the incident or change, as described in the following table.

GRADE	NUMBER OF ACTIVE SUBSCRIBERS AFFECTED
Critical	More than 7 500
Major	1 201 to 7 500
Minor	96 to 1 200
Low	Less than 96

System related unplanned outages and planned maintenance are graded and prioritized based on the impact to Service Providers ability to achieve key fulfilment and assurance processes on Vumatel systems, as described in the following table.

GRADE	SYSTEM AFFECTED (Fully or certain functionality)
Critical if the system is fully unavailable	Service Provider Portal – Ordering; fault management; events dashboard Vx Admin – Vuma Active Ethernet service statuses GPON Portal - Vuma Core and Reach service statuses API's Salesforce - Ordering; fault management; incident management; change management
Major if the system is available but certain key functionality is not available to ISPs	
Minor / Low if the system is available but less important functionality is not available to ISPs	

UNPLANNED OUTAGES

An unplanned outage is defined as either:

- a single incident that causes multiple services to become disconnected and there is no connection between the Delivery Point and Handover Point. The service is disconnected and non-operational; or
- a single incident that causes multiple services to maintain a connection between the Delivery Point and the Handover Point, however the service delivered over the connection is impaired to the point where the service is non-operational

Unplanned service impairment outage is defined as:

A single incident resulting in a reduction in the agreed service parameters, but which otherwise leaves the service connected, operational and useable. Examples of service impairment would be;

- Prolonged or consistent reduction in measured downlink and/or uplink throughput; or
- Higher than normal latency

TARGET RESOLUTION TIMES; SERVICE TIMES AND UPDATE FREQUENCY for unplanned outages

Please note that the resolution times quoted are target times that we aim to achieve and are not commitment times.

******Qualification:** The restoration times shown below are average times. Individual incidents may, under extreme conditions, exceed the targeted restoration times.****

OUTAGE GRADE	RESOLUTION TIME	SERVICE TIMES	UPDATE FREQUENCY Unless time managed in previous update
Low	18 hours	08h00 – 17h00 Monday to Saturday	Every 4 hours
Minor	24 hours	08h00 – 21h00 Monday to Saturday	Every 3 hours
Major	30 hours	All hours	Every 2 hours
Critical	12 hours	All hours	Hourly

INCIDENT REPORTS

Incident reports will only be provided to ISP's for unplanned outages graded at Critical. Such reports will be shared with ISP's, via the events dashboard on the SP Portal, within 5 working days of the resolution of the unplanned outage.

PLANNED MAINTENANCE

Planned maintenance follows the change management process. It is scheduled time during which services are disconnected and non-operational or impaired due to rehabilitation, upgrades, service additions, re-architecture, deployment of new technologies, etc.

The Vumatel Change Team will notify Service Providers, via the Service Provider Portal, of all upcoming, approved, planned maintenance events and the status of all in progress planned maintenance events. In the event of the Service Provider Portal being unavailable, email communication will be sent to ISP's via email for Critical and Major graded planned maintenance events only.

The urgency of a planned maintenance event is determined by the potential impact that a known risk can have on active subscribers or system use.

The following table describes the notice period that we will endeavor to give Service Providers, per urgency type and grade:

URGENCY	NOTICE PERIOD
Emergency	24 Hours
Expedited	2 days
Standard	3 - 7 days

Where Vumatel's assistance is required to complete changes specific to a Service Providers architecture, we request for Service Providers to follow the same notice periods described in the above table. Change requests must be submitted to isp.notifications@vumatel.co.za and must include the full details of the change required; the date and time the change is to be executed and the Service Providers contact person that Vumatel must liaise with.

NETWORK AVAILABILITY

The Vumatel network has a planned minimum uptime of 99.5%. Availability is measured as a percentage and is calculated in accordance with the below formula:

(Total time during the measurement period – the sum of all unavailable times that occurred during the measurement period) / Total time during the measurement period

The following shall be excluded when calculating network availability:

- Planned maintenance by Vumatel or its partners
- Unplanned outages caused by Service Providers' personnel or equipment
- Theft or willful destruction of Vumatel's core infrastructure
- Unavailability due to Force Majeure events
- All hold time required during an unplanned outage, at Vumatel's discretion, for safety and security reasons

ANNEXURE 3**HANDLING OF SUBSCRIBER ORDERS****1. DEFINITIONS**

- 1.1 **Order Creation** – this is when the order placement form has been fully populated by the Service Provider on behalf of the subscriber and submitted for order creation via the Vuma Service Provider Portal or API.
- 1.2 **Lead conversion to an order** – Leads that are placed via the Vuma website or shopfront as well as by reseller or direct sales contact centre teams are routed to Service Providers for acceptance using the Vuma Service Provider Portal. Leads need to be accepted by Service Providers within seven business days. Upon Lead acceptance, the lead is converted to an order within Vuma systems.

2. LINE INSTALLATION AND ACTIVATION

- 2.1 Prior to any provisioning of services to the Subscriber, the Subscriber is required to have an in-house connection to the Network.
- 2.2 New installations for connecting the fibre from the boundary to inside the property can be ordered via the VUMATEL API, website or Service Provider portal.
- 2.3 During the line ordering process it will be required that the landlord/homeowner consent has been obtained for the installation to occur. An installation date will be agreed between the accredited installer and the Subscriber. The physical installation from property boundary will take between four to eight (4-8) hours depending on the complexity of the installation.
- 2.4 The time from order to installation being completed will typically be seven business days subject to the Subscriber's availability for scheduling to be on-site for the installation, subscriber's payment made for Reach or Key services, whether the specific Subscriber's installation is technically able to proceed, whether VUMATEL is able to access the Subscriber's property, or as soon as reasonably possible in the circumstances.
- 2.5 Installations (hours of operation) - 8am to 5pm, Monday to Friday (excluding weekends and Public Holidays). Ad hoc with prior arrangement on Saturdays dependent on area and installation partner availability.

3. **SUBSCRIBER ORDERING PROCESS (VIA SERVICE PROVIDER)**

- 3.1 During this process the Subscriber chooses a Service Provider for services by contacting the Service Provider. The Service Provider will confirm with the Subscriber that it has an installed line connected to the VUMATEL network. If the Subscriber already has a line installed the ordering process will continue with the Service Provider confirming the network identifier with the subscriber or in the event that it is not installed the Service Provider will refer the Subscriber to the process outlined in 1 above and upon confirmation of installation completion continue with the ordering process.
- 3.2 The Subscriber and Service Provider enters into an agreement and the Service Provider orders the provisioning of the service from VUMATEL via the Service Provider portal provided by VUMATEL either manually or via an interface should it be in place. The following information will be provided to VUMATEL by the Service Provider:
- Name and Surname
 - Address
 - Apartment number and complex name (if applicable)
 - ID number
 - Telephone number/contact number
 - Invoice address
 - Selected service/s
 - the Service Provider's Customer Number/ID
- 3.3 VUMATEL will send a connection notification to the Service Provider Subscriber after provisioning the services. The Service Provider can view the order progress updates provided using the Service Provider Portal or will be notified via API if API integrated. The connection notification will include, in addition to the information above, the connection date and time. The Subscriber can use the service immediately after VUMATEL has completed the connection and VUMATEL can commence invoicing for the services as per this Agreement. VUMATEL endeavours to install and activate the requested service within 5-7 business days after the receipt of the Subscriber's order.

4. **SUBSCRIBER ORDERING PROCESS (VIA VUMATEL PORTAL OR API)**

- 4.1 During this process the Service Provider places the order with the selected service on behalf of the Subscriber for services by completing the order placement form on the

VUMATEL Service Provider Portal/API. The Subscriber accepts the Service Provider's terms and conditions as part of the ordering process.

4.2 VUMATEL will then either (depending on the arrangement with the Service Provider and the network architecture);

- provision the service to the Subscriber immediately; or
- provide the Subscriber information to the Service Provider via a notification or an interface should it be in place after which the Service Provider will confirm the order and notify VUMATEL to provision the service.

4.3 The following information will be provided by VUMATEL to the Service Provider:

- Name and Surname
- Address
- Apartment number (if applicable)
- ID number
- Telephone number / contact number
- Invoice address
- Selected service/s

4.4 VUMATEL will send a connection notification to the Subscriber and the Service Provider after provisioning the services to the Subscriber. The connection notification will include, in addition to the above information, the connection date and time. The Subscriber can use the service immediately after VUMATEL has completed the connection and VUMATEL can commence invoicing for the services as per this Agreement. VUMATEL endeavours to install and activate the requested service within 5-7 business days after the receipt of the Subscriber's order.

5. **ORDER CANCELLATION OR AMENDMENT**

5.1 An order can be cancelled or amended within the Cooling Off Period of seven days.

5.2 In such an instance, the Service Provider will send a Cancellation or Amendment Request to VUMATEL. This request will be confirmed by VUMATEL by issuing a Cancellation or Amendment Confirmation to the Service Provider.

5.3 VUMATEL will promptly arrange for such cancellation or amendment to be effected.

6. TERMINATION OF SUBSCRIPTION

- 6.1 A Service Provider can terminate the subscription of the subscriber service by using the Vumatel Service Provider Portal/API.
- 6.2 The termination can be affected immediately or at a future selected date. Should the termination be affected immediately, the Service Provider will still be billed for the remainder of the mandatory 30-day termination notice period.
- 6.3 The Service Provider could be subject to early termination fees if the Subscriber has entered into a term contract as defined in the Area Specific Agreement.

7. SUSPENSION OF SUBSCRIPTION

- 7.1 A Service Provider can manage a suspension of a Core, Active Ethernet service of a Subscriber in the event where a Subscriber is in arrears in its payment to the Service Provider by processing a suspension using the VUMATEL Service Provider Portal.
- 7.2 The Service Provider will send process a Suspension order to via the VUMATEL Service Provider Portal. This request will be processed immediately by the Vumatel system which will generate a suspension order number upon successful completion with the exception of system errors experienced of which the Service Provider will need to alert the Vumatel team thereof. Core GPON services will be managed by the Service Provider using their own radius server to control suspensions. In the instance of Reach or Key Monthly Recurring services, services are automatically suspended when the payment has not been received via the debit run within the stipulated retry periods.
- 7.3 To lift the suspension of the service, the Service Provider will process a Resume request using the VUMATEL Service Provider Portal. A resume order will be generated and the service will be re-activated by the system.
- 7.4 A service may be suspended for up to thirty 60 days after which the service will be Terminated as in clause 5, unless the suspension has been lifted during this period by the Service Provider.

ANNEXURE 4**TROUBLESHOOTING AND FAULT ROUTINE****1. SERVICE PROVIDER REPORTED FAULTS**

- 1.1 The Service Provider can report faults and service related issues for the individual subscriber links by logging cases via the Vumatel Service Provider Portal.
- 1.2 When reporting an event to VUMATEL, the Service Provider will provide as much information as possible including, without limitation
 - Date/time that Service Provider received fault report from Subscriber
 - Service Providers' reference number
 - Subscriber identification on the Vuma network
 - Description of event and any Service Provider provided diagnostic information as appropriate
- 1.3 Prior to escalating a fault or service issue event to VUMATEL, the Service Provider shall first determine that the event is not due to the Service Provider's own network, any CPE provided by the Service Provider or any action or lack of action on the part of the Subscriber – for instance, is the Subscriber's Equipment connected and working as it should.
- 1.4 The Service Provider shall be responsible for the installation, maintenance and repair of its own equipment and facilities (rented or owned) at the Delivery Point.
- 1.5 Upon the logging of the case VUMATEL will attend to the case and troubleshoot for resolution. Upon completion of diagnostics, VUMATEL will provide feedback by updating the case logged to the Service Provider via the Vumatel Service Provider Portal.
- 1.6 VUMATEL will then take action to correct the event in accordance with the communicated turnaround times. We endeavour to resolve cases within 3 business days. Note that FTTH services are 'best effort services' and therefore not subject to downtime penalties.
- 1.7 If VUMATEL determines that a Fault has been caused by any equipment belonging to the Subscriber or installed at the Subscriber's home, VUMATEL may charge the Subscriber to repair the Fault and is entitled to charge the Subscriber directly and collect a call-out fee based on the Subscriber's location and the nature and extent of

the Fault, which call-out fee will be Set by Vumatel in its reasonable discretion from time to time.

2. REPORTING & STATISTICS

- 2.1 On a monthly basis, VUMATEL will compile a Monthly Event report for the Service Provider. The Monthly report will provide a summary of orders fulfilled, cases logged and any critical network events, both Service Provider and VUMATEL reported, occurring during the reporting period.
- 2.2 In addition, the report will summarise certain performance metrics including but not limited to;
- Mean Time to Repair time
 - Mean Time to Install
 - Faults by fault type (e.g. maintenance/support, installation, etc.)
 - Average network availability during the period
- 2.3 As necessary, VUMATEL will conduct regular review meetings with Service Provider as part of a process on continuous improvement.